

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
(Indianapolis Division)

RED BARN MOTORS, INC.,	*	DOCKET NO. 1:14-cv-01589-TWP-DKL
PLATINUM MOTORS, INC.,	*	
MATTINGLY AUTO SALES, INC.,	*	CLASS ACTION
Individually, and on behalf of other	*	
members of the general public	*	
similarly situated,	*	
	*	
v.	*	
	*	
COX ENTERPRISES, INC.,	*	
COX AUTOMOTIVE, INC.,	*	
NEXTGEAR CAPITAL, INC.,	*	
F/K/A DEALER SERVICES	*	
CORPORATION, successor by merger	*	
with Manheim Automotive Financial	*	
Services, Inc., and JOHN WICK,	*	
	*	

PLAINTIFFS' MOTION TO STRIKE
DEFENDANTS' NOTICE OF ADDITIONAL AUTHORITY
REGARDING CLASS CERTIFICATION [Dkt. 204]

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc., and respectfully move this Court to strike Defendants' Notice of Additional Authority Regarding Class Certification (Dkt. 204) (the "Notice").

On May 15, 2017, *six days after* this Court held oral argument on Plaintiffs' Motion for Class Certification (*see* Dkt. 201 and 202) and *ten days after* this Court denied Defendants' motion for leave to file a sur-reply in opposition to the class certification motion (Dkt. 199), Defendants filed the Notice, attempting to cite additional authority in opposition to Plaintiffs' motion for class certification. Defendants' Notice asserts that this late filing is appropriate in light of the arguments

made in Plaintiffs' Motion for Partial Summary Judgment on Breach of Contract Claim and memorandum in support (Dkt. 194 and 195). However, Plaintiffs' Motion for Partial Summary Judgment was filed on April 26, 2017, ***nearly two weeks before*** oral argument. Moreover, at oral argument, Defendants failed to mention that they had located additional authority that they believe is relevant to class certification, nor did they request leave of Court to make any additional filings in opposition to class certification. At the conclusion of the hearing, the Court asked counsel for each side whether there were any additional matters to raise, and Defense Counsel declined to raise this issue—or any other issue—at that time. *See* Dkt. 202 at pp. 29-30. The Notice is yet another improper “attempt by the Defendants to ‘get the final word’” (Dkt. 199 at p. 3) on the class certification motion, and it should be stricken from the record and given no consideration by the Court.

CONCLUSION

For the reasons set forth herein, Plaintiffs' motion to strike should be granted and the proposed order entered striking the Notice from the record of this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2017, a copy of the foregoing was filed electronically. Notice of the filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

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